

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

DAVID S. HICKS,)
Petitioner,) Case No. 1:06CV70599
v.) **OPINION AND ORDER**
UNITED STATES ATTORNEY'S) By: James P. Jones
OFFICE, ET AL.,) Chief United States District Judge
Respondents.)

William H. Cleaveland, Roanoke, Virginia, for Petitioner; William F. Gould, Assistant United States Attorney, Charlottesville, Virginia, for Respondents.

The petitioner David S. Hicks requests leave to engage in limited discovery in this proceeding, brought pursuant to the Hyde Amendment, Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997) (found as statutory note to 18 U.S.C.A. § 3006A (West 2000), and seeking an award of attorneys' fees and litigation expenses. The Hyde Amendment permits such an award in the event a criminal prosecution brought by the government was "vexatious, frivolous, or in bad faith." *Id.*

Hicks was acquitted by a jury in this court of perjury and obstruction of justice. The charges were related to a federal civil suit brought against Hicks for the wrongful death of a inmate in a local jail where Hicks served as a jailer and Hicks' subsequent appearance before a federal grand jury. The respondents oppose any discovery on the

ground that the relevant facts are adequately disclosed in the record of the civil suit and the criminal prosecution, including the discovery produced in those proceedings.

Even assuming that discovery is available in a Hyde Amendment case, whether to allow it is a matter of the court's discretion, rather than of right. *See Brandon Enters., LLC v. United States*, No. 2:04CV00104, 2005 WL 165501, at *1 (W.D. Va. Jan. 26, 2005). Based on the facts of this case, I do not find that discovery is warranted. Balancing the time and expense of discovery with any possible benefit, I find that the present record is adequate to allow a full and fair consideration of the merits of the present petition.

For these reasons, it is **ORDERED** that the Motion for Limited Discovery is DENIED.

ENTER: March 9, 2007

/s/ JAMES P. JONES
Chief United States District Judge